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Gary W. Steinke, *Acting Executive Director*

October 26, 2005

Government Oversight Committee  
State Capitol  
Des Moines IA 50319

Re: Regent Comments on Proposed Model Procurement Code

Dear Members of the Government Oversight Committee:

The Government Oversight Committee requested position papers at its meeting held September 19-20, 2005, regarding a proposed model procurement code.

The Iowa Code, Administrative Rules, Regent Policy Manual, and universities' operating policies and procedures already address the primary issues identified in the proposed model procurement code. The proposed code contradicts certain aspects of current state law. The additional structures outlined in the proposed code would make the procurement process cumbersome, duplicate expertise and staffing within various agencies, and create delays in the selection and award process. The proposed code would increase inefficiencies, promote bureaucracy, and restrict best business practices.

Additional layers of government and statutory limitations would cost the taxpayers more, while lessening services and causing delays in the procurement process. The direction of public procurement and administration should be to provide high quality services for the least cost. To achieve the outcome of maximizing value to the citizens of Iowa, flexibility is essential for best business practices.

Regent procurement professionals are dedicated to buying value and not merely goods or services. The procurement process at each Regent institution is fully integrated and highly competitive. Each procurement professional works with requestors to develop specifications; conducts competitive processes appropriate for the type of procurement; evaluates, awards, and writes legal contracts; handles payment or compliance problems; and performs contract management. The Regent institutions have been able to implement best procurement practices through the flexibility and autonomy provided by current state laws.

Codifying procurement processes could seriously jeopardize implementation of on-going improvements. Purchasing processes would very likely be outdated long before the Iowa Code could be changed. The proposed model procurement code would result in obsolescence and would not add value to procurement productivity.

## **Comments by Specific Sections**

### **Article 1 – General Provisions**

Article 1 provides the general purpose and policies of the model procurement code and outlines options as to its applicability to political subdivisions and local government entities. It also provides certain definitions applicable to the model procurement code.

### **Article 2 – Procurement Organization**

Article 2 proposes organizational options that are contrary to current statutory Regent authority and would create an additional bureaucratic layer in the procurement process. This additional structure would add no value to the Regent institutions procurement practices, duplicate expertise and staffing within various agencies, increase costs, and create delays in the evaluation and award processes. Delegating procurement authority to those closest to the need is essential for business efficiency and is recognized as best practice in the purchasing environment. Implementation of an additional layer of government will certainly result in a loss of those same business efficiencies. Each Regent institution has needs that are unique and significantly different from the State's central government.

### **Article 3 – Source Selection and Contract Formation**

The Regent institutions comply with established laws, regulations, and Regent purchasing policies (competitive sealed bids, competitive sealed proposals, small purchases, sole source procurement, emergency procurements, special procurements, and architectural & engineering services). The proposed code limits procurement opportunities to some that are not practical or advantageous to the State. For example, the Regent institutions currently use competitive sealed proposals (such as RFP's) to better enable their procurement professionals to evaluate proposals, buying value and not merely low bid solutions. This concept is commonly utilized throughout higher education as a best practice.

Part E of this article of the model procurement code prohibits the use of a cost-plus-a-percentage-of-cost contract. Again, the code limits procurement options that are currently allowed by Iowa law and are easier to evaluate and administer. The Regent institutions have been maximizing competition, establishing multi-year contracts, retaining procurement records, etc. for many years.

### **Article 4 – Specifications**

Article 4 requires the additional government layer to review the preparation standards, maintenance, and specifications adding unnecessary bureaucracy to the procurement process. Both the Regent Policy Manual and the Iowa Administrative Code address preparation of standards and specifications for goods and services and provide guidelines for how the standards and specifications should be structured. Specifications are prepared to meet the functional requirements necessary to perform a specific task or provide a desired outcome.

### **Article 5 – Procurement of Infrastructure Facilities and Services**

Article 5 outlines four different ways in which a State may procure infrastructure facilities and services, including design-bid-build, design-build, design-build-operate-maintain, design-build-finance-operate-maintain. It also introduces the concept of design requirements. Current

language in the Code of Iowa only allows the design bid-build process beyond certain dollar thresholds.

The Regent Policy Manual outlines the way in which the bidding and awarding of construction contracts at Regent institutions is to occur, consistent with Iowa law. Rather than categorizing by the different types of project delivery as the model procurement code does, the Regent Policy Manual classifies different procedures based on the dollar amount of the estimated costs for construction and provides for more effective governance.

#### **Article 6 – Modification and Termination of Contracts for Supplies and Services**

Article 6 of the model procurement code makes allowances for the additional government layer to create a standard set of conditions for inclusion in all State contracts. Regent institutions need to have the flexibility to add or modify terms and conditions depending on the type of procurement as well as the funding of the procurement. Implementation of more bureaucracy would add additional delays in the award process, increase costs, and destroy current efficiencies, as well as potentially subject the institutions to unnecessary risks in not being able to adjust particular procurement terms and conditions to meet their needs.

#### **Article 7 – Cost Principles**

Article 7 indicates regulations are needed for reimbursing costs under contract provisions. A well-written contract already addresses what is needed to define how adjustments will be made. Negotiation of contracts in the absence of true competition is not a new subject matter. The Regents have experienced negotiators on their procurement staffs. The implications in this article would add unneeded additional layers of government to the current process.

#### **Article 8 – Supply Management**

The provisions in Article 8 would remove the controls and rules the universities currently have in disposing of excess property. The Regent Purchasing Manual already has rules specified for the disposal of excess property.

#### **Article 9 – Legal and Contractual Remedies**

This article provides a methodology for bid protests, debarment, and suspension. All these mechanisms already exist in Regent policy. This article would remove the control of the Regent Universities to handle vendor protests. The model procurement code would add another layer of review that is currently performed by the Board of Regents adding delays, costs and unnecessary processes. The additional government layer would not have intimate knowledge of institutional processes. Additional time and effort would be required to prepare for a protest hearing.

#### **Article 10 – Intergovernmental Relations**

Article 10 authorizes public procurement units to enter into cooperative purchasing agreements. Regent institutions are already realizing these benefits due to the existing cooperative purchasing agreements which include State and Regent agreements, Novation, Big Ten Purchasing Consortium, Iowa Biotech Association, Education and Institution Cooperative, etc.. The Regent Policy Manual encourages inter-institutional purchasing. Cooperative purchasing also currently occurs via interagency agreements and state purchasing contracts. State

agencies also have the ability to purchase from a Regent institution through a pre-arranged agreement.

The additional government layer, while appearing to concentrate the expertise, ignores the shared load value of cooperative efforts by local experts who can better administer details of local needs and concerns of the local users.

#### **Article 11 - Assistance to Small and Disadvantaged Businesses, Federal Assistance and Contract Procurement Requirements**

This article provides a policy outline for assisting small and disadvantaged businesses. Chapter 681 7.7 of the Iowa Administrative Code instructs the Regent institutions to encourage targeted small businesses to submit bids as prime contractors. The policies are established in the State of Iowa Targeted Small Business (TSB) and the United States Small Business Administration (SBA) programs. Regent institutions continue to work to increase the proportion of contracts awarded to TSB vendors and are committed to participating in and developing various methods to attract targeted small business vendors. The Regent Policy Manual allows Regent institutions to use methods that work best at a specific institution to encourage targeted small businesses to take part in bidding while meeting the requirements of the Iowa Administrative Code.

#### **Article 12 – Ethics in Public Contracting**

The proposed model procurement code devotes an entire article to the ethical side of public procurement. It establishes an ethics commission to disseminate regulations concerning the ethics of public contracting.

The state of Iowa has established conflict of interest laws and the Board of Regents has specific policies to outline compliance with those laws. All employees of a Regent institution, employees of the Regent Board office, or members of the Board have a prohibited interest in doing business with a Regent institution. Specific approval is required by the Board, and summarized transaction totals for all approved conflict of interest vendors must be provided in the institution's annual report (681 IAC 8.9).

In addition, all Regent institutions belong to the National Association of Educational Buyers (NAEB) and subscribe to that organization's Code of Ethics. This code covers the majority of standards listed in the model procurement code, including ethics, conflict of interest, disclosure requirements, gratuities and kickbacks.

If you have any questions or need more information, please don't hesitate to contact this office.

Sincerely,

Gary W. Steinke